UNITED STATES PATENT AND TRADEMARK OFFICE

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EXAMINER
KEEHN, RICHARD G

ART UNIT	PAPER NUMBER
2456	

NOTIFICATION DATE	DELIVERY MODE
11/09/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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	Application No.	Applicant(s)
Office Action Summary	10/786,450	ZAKHAROFF, MICHAEL JACK
	Examiner	Art Unit	
	RICHARD G. KEEHN	2456	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _10 July 2009_.
2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-30_ is/are pending in the application.
　　4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) _1-30_ is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
　　a) ☐ All   b) ☐ Some * c) ☐ None of:
　　　　1. ☐ Certified copies of the priority documents have been received.
　　　　2. ☐ Certified copies of the priority documents have been received in Application No. _____.
　　　　3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
　　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
　　Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
　　Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. **Claims 1-30 have been examined and are pending.**

2. **Applicant's arguments are not persuasive. Accordingly, this Office action**

is made FINAL.

Response to Arguments

3. Applicant's arguments filed 7/10/2009 have been fully considered but they are

not persuasive. Examiner respectfully traverses Applicant's arguments for the following

reasons:

    a.   Applicant (incorrectly) asserts on page 14 that "Examiner further correctly

recognized that even a selective combination of Shaw et al. and D'Souza et al.

fails to disclose that moving email messages **stored in the first queue to a**

second queue is based upon receipt of a delivery failure message, and moving

email messages having a common characteristic with a successfully delivered

email message **from the second queue to the first queue**" the asserts on page

15 that Hamilton et al. "fails to disclose that moving email messages **stored in**

the first queue to a second queue is based on receipt of a delivery failure

message." (**emphasis** added by Examiner). Examiner agrees that Hamilton et

al. do not disclose moving email messages **among a first "queue" and a**

second "queue", but *Hamilton et al. were not relied upon for disclosing this*

claimed feature (from the second queue to the first queue and vice versa). The

movement between **"queues"** and common characteristic are disclosed by the

combination of Shaw et al. and D'Souza et al. (D'Souza et al. – Page 2, ¶ [0028]

disclose the decision engine storing packets in a faster send rate queue if the

source address is found or a slower send rate queue if the source address is not

found. ¶ [0029] discloses that there can be multiple levels of queues with

gradually slower send rates. Figure 3 discloses sending at multiple rates

depending on which queue the packet is placed into; D'Souza et al. - Page 2, ¶

[0030] discloses the common characteristic of status of whether the source

address is known) Hamilton was relied upon to disclose "**moving email based**

upon receipt of a deliver failure message, and moving email having a

common characteristic with a successfully delivered message." (Office

action page 5) Hamilton et al. disclose these claim features (Hamilton et al.

disclose determining whether a document is to be designated for a first or second

delivery method based on receipt of email delivery success or receipt of email

delivery failure – Claims 1 and 6). Therefore, the combination of Shaw et al.,

D'Souza et al. and Hamilton et al. disclose "moving email messages stored in the

first queue to a second queue is based upon receipt of a delivery failure

message, and moving email messages having a common characteristic with a

successfully delivered email message from the second queue to the first queue."

b.   Applicant also argues that the combination of references is improper.

        i.   First, in response to applicant's argument that the examiner's

        conclusion of obviousness is based upon improper hindsight reasoning, it

        must be recognized that any judgment on obviousness is in a sense

necessarily a reconstruction based upon hindsight reasoning. But so long

as it takes into account only knowledge which was within the level of

ordinary skill at the time the claimed invention was made, and does not

include knowledge gleaned only from the applicant's disclosure, such a

reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170

USPQ 209 (CCPA 1971).

ii.   Second, Shaw et al. is a system for performing email (electronic

message) management. This system includes an email queuing system

(Figure 9) with multiple queues (Figure 1, items 100, 140, 151, 153 and

155) and detection of delivery failure (Column 11, lines 40-46). Like Shaw

et al., D'Souza et al. also is a system with prioritized queues for message

delivery, wherein each queue sends the electronic message at a different

sending rate (D'Souza et al. – Page 2, ¶ [0028] disclose the decision

engine storing packets in a faster send rate queue if the source address is

found or a slower send rate queue if the source address is not found. ¶

[0029] discloses that there can be multiple levels of queues with gradually

slower send rates. Figure 3 discloses sending at multiple rates depending

on which queue the packet is placed into). Both systems, Shaw et al. and

D'Souza et al. deal with queued electronic message transfer, therefore it

would have been obvious to one of ordinary skill in the art to apply the

stepped queue sending rates of D'Souza to the queued sending of

messages taught by Shaw et al. Therefore, the combination of Shaw et al.

and D'Souza et al. is an obvious combination. The combination of Shaw et al. and D'Souza et al. in further view of Hamilton et al. is also obvious. While the combination of Shaw et al. and D'Souza et al. disclose the multi-queue stepped sending rates of electronic messages, with sending rates based upon detection of delivery failure (Shaw et al.—Column 11, lines 40-46 disclose the email message being rerouted based on delivery timeout failure), Hamilton et al. add the additional obvious step of monitoring whether electronic message transmission was actually received by the addressed party with a closed loop feedback system of receipt of message delivery or failure (Hamilton et al. disclose determining whether a document is to be designated for a first or second delivery method based on receipt of email delivery success or receipt of email delivery failure – Claims 1 and 6). One of ordinary skill in the art would certainly have added closed loop monitoring of email message delivery to the combination of Shaw et al. and D'Souza et al. These motivations and the motivations cited below are not "based on motivation provided by Applicant's own specification" as Applicant alleges on page 17 of the arguments. Furthermore, all of the references are aligned with computer to computer communication. Therefore, the combination of Shaw et al., D'Souza et al. and Hamilton et al. is an obvious combination and Applicant's arguments are not persuasive.

Claim Rejections - 35 USC § 103

4.   The text of those sections of Title 35, U.S. Code not included in this action can

be found in a prior Office action.

5.   Claims 1-2, 4-6, 8-11, 13-15, 17-18, 20-22, 24-25 and 27-29 are rejected under

35 U.S.C. 103(a) as being unpatentable over US 6,282,565 B1 (Shaw et al.), and

further in view of US 2004/0236966 A1 (D'Souza et al.) and US 2003/0115022 A1

(Hamilton et al.).

        As to Claims 1, 10, 17 and 24, Shaw et al. disclose a communications system,

delivery server, electronic mail communications method and computer-readable

medium having computer-executable instructions for performing steps, hereafter

referred to at the "system", comprising:

        at least one destination server for hosting a plurality of electronic mail (email)

message boxes (Shaw et al. – Figure 1, Item 110 discloses the Incoming Email Server);

        a plurality of communications devices for generating email messages each

associated with a respective message box (Shaw et al. – Figure 1, items 171, 173, 175,

161, 162 and 16n disclose communications devices generating email messages with

user mailboxes); and

        a delivery server comprising a plurality of queues and a controller for (Shaw et al.

– Figure 1, items 100, 140, 151, 153 and 155 disclose the Enterprise Email System,

Email Queuing and Mailbox System comprising mail queues);

moving email messages stored in said first queue to a second queue based upon

a delivery failure (Shaw et al.—Column 11, lines 40-46 disclose the email message

being rerouted based on delivery timeout failure), and

the email messages generated by said communications devices (Shaw et al. –

Column 1, lines 36-39 disclose email messages being generated by users); and

with a successfully delivered email message (Shaw et al.—Column 11, lines 40-

46 disclose the email message being rerouted based on status of delivery timeout

failure).

Shaw et al. disclose the email delivery server with queues, but do not explicitly

disclose storing in a first queue, and attempting to send to said at least one destination

server at a first sending rate; and attempting to send stored in said second queue to

said at least one destination server at a second sending rate less than the first sending

rate; and moving from said second queue to said first queue, but D'Souza et al. disclose

storing in a first queue, and attempting to send to said at least one destination

server at a first sending rate (D'Souza et al. – Page 2, ¶ [0028] disclose the decision

engine storing packets in a faster send rate queue if the source address is found or a

slower send rate queue if the source address is not found. ¶ [0029] discloses that there

can be multiple levels of queues with gradually slower send rates. Figure 3 discloses

sending at multiple rates depending on which queue the packet is placed into),

attempting to send stored in said second queue to said at least one destination

server at a second sending rate less than the first sending rate (D'Souza et al. – Page

2, ¶ [0028] disclose the decision engine storing packets in a faster send rate queue if

the source address is found or a slower send rate queue if the source address is not found.), and

moving from said second queue to said first queue (D'Souza et al. - Page 2, ¶ [0030] discloses the common characteristic of status of whether the source address is known; D'Souza et al. – Page 2, ¶ [0028] disclose the decision engine storing packets in a faster send rate queue if the source address is found or a slower send rate queue if the source address is not found. ¶ [0029] discloses that there can be multiple levels of queues with gradually slower send rates. Figure 3 discloses sending at multiple rates depending on which queue the packet is placed into).

The combination of Shaw et al. and D'Souza et al. discloses the email delivery server with queues, but do not explicitly disclose moving email based upon receipt of a delivery failure message; and moving email having a common characteristic with a successfully delivered message, but Hamilton et al. disclose

moving based upon receipt of a delivery failure message (Hamilton et al. disclose determining whether a document is to be designated for a first or second delivery method based on receipt of email delivery success or receipt of email delivery failure – Claims 1 and 6); and

moving having a common characteristic with a successfully delivered message (Hamilton et al. disclose determining whether a document is to be designated for a first or second delivery method based on receipt of email delivery success or receipt of email delivery failure – Claims 1 and 6).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine sending data at fast, then gradually slower sending rates and moving data to be sent into queues based on send rate, both up in rate and down taught by D'Souza et al., with a delivery server comprising a plurality of queues and a controller for moving email messages stored in said first queue to a second queue based upon a delivery failure taught by Shaw et al.

One of ordinary skill in the art at the time the invention was made would have been motivated to mitigate the effects of transmission flooding by those deemed to have adverse effect on communication throughput (D-Souza et al. - ¶ [0014]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine message delivery detection based upon receipt of a delivery failure message; and having a common characteristic with a successfully delivered message taught by Hamilton et al., with detecting success or failure of email delivery taught by the combination of Shaw et al. and D'Souza et al.

One of ordinary skill in the art at the time the invention was made would have been motivated to provide reliable monitoring and delivery of electronic documents (Hamilton et al. – Page 1, ¶ [0005]).

As to Claims 2, 11, 18 and 25, the combination of Shaw et al., D'Souza et al. and Hamilton et al. discloses the system of Claims 1, 10, 17 and 24 respectively, wherein the delivery failures are based upon a failure to deliver email messages to respective

message boxes (Shaw et al.—Column 11, lines 40-46 disclose the email message

being rerouted based on status of delivery timeout); and

wherein the common characteristic comprises a common message box (D'Souza

et al. - Page 2, ¶ [0030] discloses the common characteristic of status of whether the

source address is known).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claims 4, 13, 20 and 27, the combination of Shaw et al., D'Souza et al. and

Hamilton et al. discloses the system of Claims 1, 10, 17 and 24 respectively, wherein

said controller stores directly in said second queue email messages generated by said

communications devices sharing the common characteristic with an email message

already stored in said second queue (D'Souza et al. – Page 2, ¶ [0028] discloses direct

storage into the slower queue based on the common status of unknown source

address; Shaw et al. discloses email messages as previously discussed).

The motivation and obviousness arguments the same as in Claim 1.

As to Claims 5, 14, 21 and 28, the combination of Shaw et al., D'Souza et al. and

Hamilton et al. discloses the system of Claims 1, 10, 17 and 24 respectively, wherein

said second queue comprises a plurality thereof arranged in a hierarchy each having a

respective storage interval associated therewith (D'Souza et al. – Page 2, ¶¶ [0028 –

0029] disclose multiple classes of queues being serviced from highest to lowest rate),

the storage intervals successively increasing from a highest queue in the

hierarchy to a lowest queue (D'Souza et al. – Page 2, ¶¶ [0028 – 0029] disclose multiple

classes of queues being serviced from highest to lowest rate);

wherein said controller moves email messages stored in said first queue to one

of the queues in the hierarchy based upon a delivery failure (Shaw et al.—Column 11,

lines 40-46 disclose the email message being rerouted based on delivery timeout); and

wherein said controller moves email messages stored in a higher queue in the

hierarchy to a next lower queue in the hierarchy after being stored in said higher queue

for the storage interval thereof (Shaw et al.—Column 11, lines 40-46 disclose the email

message being rerouted based on delivery timeout).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claims 6, 15, 22 and 29, the combination of Shaw et al., D'Souza et al. and

Hamilton et al. discloses the system of Claims 5, 14, 21 and 28 respectively, wherein

said controller attempts to send messages from each of said queues in the hierarchy at

successively decreasing sending rates from said highest queue to said lowest queue

(D'Souza et al. – Page 2, ¶ [0029] discloses multiple classes of queues between fastest

to slowest).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claim 8, the combination of Shaw et al., D'Souza et al. and Hamilton et al.

discloses the communications system of Claim 1 wherein at least one of said plurality of

communications devices comprises a wireless communications device (Shaw et al. –

Column 1, lines 22-27 discloses internet which one of ordinary skill in the art at the time

the invention was made would know to include wireless devices such as phones (line

17), pda's, laptops etc.).

As to Claim 9, the combination of Shaw et al., D'Souza et al. and Hamilton et al.

discloses the communications system of Claim 1 further comprising a wide area

network (WAN) connecting said at least one destination server and said delivery server

(Shaw et al. – Column 1, lines 22-27 discloses internet which one of ordinary skill in the

art at the time the invention was made would know to include wide area networks).

6.   Claims 3, 12, 19 and 26 are rejected under 35 U.S.C. 103(a) as being

unpatentable over the combination of Shaw et al., D'Souza et al. and Hamilton et al. as

applied to claims 1, 10, 17 and 24 above respectively, and further in view of US

2003/0145106 A1 (Brown).

As to Claims 3, 12, 19 and 26, the combination of Shaw et al., D'Souza et al. and

Hamilton et al. discloses the system of Claims 1, 10, 17 and 24 respectively,

wherein the delivery failures are based upon a failure to deliver email messages

to said destination servers (Shaw et al.—Column 11, lines 40-46 disclose the email

message being rerouted based on status of delivery timeout); and

wherein the common characteristic comprises having respective message boxes hosted by a common destination server (D'Souza et al. – Page 2, ¶ [0028] discloses direct storage into the slower queue based on the common status of unknown source address).

The combination of Shaw et al., D'Souza et al. and Hamilton et al. does not explicitly disclose wherein said at least one destination server comprises a plurality of destination servers, but Brown discloses wherein said at least one destination server comprises a plurality of destination servers (Brown – Page 2, paragraph [0026] discloses the group of email servers).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine wherein said at least one destination server comprises a plurality of destination servers taught by Brown with at least one destination server for hosting a plurality of electronic mail (email) message boxes taught by the combination of Shaw et al., D'Souza et al. and Hamilton et al.

One of ordinary skill in the art at the time the invention was made would have been motivated to provide an intermediary to improve network traffic flow (Brown – Page 1, paragraphs [0005-0007]).

7.   Claims 7, 16, 23 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Shaw et al., D'Souza et al. and Hamilton et al. as applied to claims 5, 14, 21 and 28 above respectively, and further in view of US 5,632,011 (Landfield et al.).

As to Claims 7, 16, 23 and 30, the combination of Shaw et al., D'Souza et al. and Hamilton et al. discloses the system of Claims 5, 14, 21 and 28 respectively.

The combination of Shaw et al., D'Souza et al. and Hamilton et al.does not disclose wherein said controller discards messages from said lowest queue in the hierarchy after being stored therein for the storage interval thereof, but Landfield et al. discloses wherein said controller discards messages from said lowest queue in the hierarchy after being stored therein for the storage interval thereof (Landfield et al. – Column 2, lines 12-22 disclose the deletion of undeliverable messages from the queue. The fact that it is determined undeliverable is the same as the applicant's determination on non-deliverability based on failure to deliver at the lowest queue).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine wherein said controller discards messages from said lowest queue in the hierarchy after being stored therein for the storage interval thereof taught by Landfield et al., with wherein said controller moves email messages stored in said first queue to one of the queues in the hierarchy based upon a delivery failure taught by the combination of Shaw et al., D'Souza et al. and Hamilton et al.

One of ordinary skill in the art at the time the invention was made would have been motivated to improve management of email by allowing undeliverable emails to be discarded (Landfield et al. – Column 1, lines 56-61).

Examiner Notes

8.   Examiner recommends looking to the specification's ¶ [0038] for disclosed

subject matter that does not appear to have been claimed. Inclusion *in sufficient detail*

and *in independent form* may help to overcome the cited prior art.

9.   Examiner recommends expanding the definition of "*sending rate*" in independent

form. "Sending rate" is a very broad phrase and can be interpreted many different ways,

even in view of the specification. Be specific about what is meant by the phrase

"sending rate." Doing so, along with the previous recommendation, may overcome the

cited prior art.

10.   The aforementioned recommendations do not necessarily indicate allowable

subject matter. Further search and/or reconsideration may be required depending on

any response. The recommendations are presented to assist in advancing prosecution.

Any decision on whether the aforementioned recommendations overcome the prior art

will need to be determined after seeing any proposed amendments and/or arguments.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to RICHARD G. KEEHN whose telephone number is

(571)270-5007. The examiner can normally be reached on Monday through Thursday,

8am - 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Bunjob Jaroenchonwanit can be reached on 571-272-3913. The fax phone

number for the organization where this application or proceeding is assigned is 571-

273-8300.

Information regarding the status of an application may be obtained from the

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RGK

/Bunjob Jaroenchonwanit/

Supervisory Patent Examiner, Art Unit 2456